

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

LEOMI TIENDA, et al.,

No. 1:20-cv-01169-NONE-SAB

Plaintiffs,

v.

ADVENTIST HEALTH HANFORD, et
al.,

Defendants.

ORDER GRANTING STIPULATION TO
DISMISS CLAIMS AGAINST THE UNITED
STATES AND REMANDING TO STATE
COURT

(Doc. No. 8)

Plaintiffs Leomi Tienda and Jimmy Tienda filed this action on February 6, 2020 in Kings County Superior Court. (Doc. No. 1 at 3.) Defendant United States of America timely removed. (*See id.* at 1–2.) The United States substituted in this action in the place of Defendant David Wayne Nelson, M.D., pursuant to 42 U.S.C. § 233(c) because Defendant Nelson was a deemed employee of the Public Health Service and was acting within the scope of such employment at the time of the incidents giving rise to the action. (Doc. No. 8 at 2.) Plaintiffs allege medical malpractice, loss of consortium, and medical battery against defendants in connection with performing a sterilization surgery instead of a scheduled diagnostic laparoscopy. (Doc. No. 1 at 3, 6–7.)

On September 3, 2020, the parties filed a stipulation to dismiss claims against the United States without prejudice and remand plaintiffs' claims against Defendants Adventist Health

1 Hanford and Samuel Morales, CRNA, back to the Kings Court Superior Court. (Doc. No. 8 at 1.)
2 The parties stipulated that plaintiff has not exhausted an administrative tort claim to the United
3 States Department of Health and Human Services. (*See id.* at 2–3.) Therefore, the parties request
4 that the court dismiss plaintiff’s claims against the United States without prejudice and remand
5 plaintiff’s claims against Defendants Adventist Health Hanford and Samuel Morales to Kings
6 County Superior Court. (*Id.*)

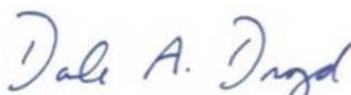
7 Accordingly, the court will dismiss the claims against the United States based on the
8 parties’ stipulation to dismiss. *See Way v. JPMorgan Chase Bank, N.A.*, No. 2:16-cv-02244-
9 TLN-KJN, 2019 WL 1405599, *1 (E.D. Cal. Mar. 28, 2019) (granting unopposed motions to
10 dismiss where plaintiff filed statement of non-opposition). This dismissal is without prejudice.

11 **CONCLUSION**

12 For the reasons set forth above, the parties’ stipulation to dismiss (Doc. No. 8) is
13 GRANTED and the claims against the United States are DISMISSED WITHOUT PREJUDICE.
14 Plaintiffs’ claims against Defendants Adventist Health Hanford and Samuel Morales, CRNA, are
15 remanded to the Kings County Superior Court.

16 IT IS SO ORDERED.

17 Dated: September 10, 2020


18 UNITED STATES DISTRICT JUDGE

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